

### Remarks

#### The Rejection of Claims 1-6 and 9-11 Under 35 U.S.C. §102

The Office Action rejected Claims 1-6 and 9-11 under 35 U.S.C. §102(b) as being anticipated by Welp et al. (USPN 5,518,199). The specific basis for this rejection appears to be “Fig. 1.” Applicants respectfully traverse the rejection.

Anticipation requires that all of the elements of the claim be taught within the four corners of a single reference.

#### Welp does not teach a floor

In the Request for Reconsideration of March 15, 2005, Applicant offered that the cross-hatched area in Figure 1 of Welp could be considered a floor. However, upon further examination of Welp, Applicants submit that there is no reference to a floor in Welp. For example, Figure 1 of Welp and the description of Figure 1 in the specification do not show or describe a floor. According to MPEP 608.02.IX (specifically, page 600-99), the cross-hatched areas shown in Figure 1 are metal. See the example in the upper left hand corner of page 600-99. Given the shape of the cross-hatched area and its metallic composition, there is no basis for assuming that Welp intended (but did not mention anywhere in the specification) the cross-hatched areas to be a floor. Since Welp does not teach a floor, Welp cannot teach securing any part of his invention to a floor.

#### Welp does not teach securing slide 11 to a framework

The Examiner states that base plate 11 (actually slide 11 in Welp) is secured to the floor via member (traverse in Welp) 9 and the “framework” of the machine. The Examiner has not specified what the Examiner considers to be “the framework.” Welp does not use this term in the specification and the drawings do not shown any element labeled as a framework. Therefore, the Examiner’s assertion that slide 11 is connected to a monolithic “framework” has no support in Welp. Figure 1 shows shaft structures apparently connected to traverses 9 and 10, respectively. These shafts extend vertically and are truncated at the top of the drawing. Neither the specification nor Figure 1 state or show to what the shafts are connected. For example, col.

3, lines 10 – 22, which describe the arrangement of the traverses do not specify anything other than that the traverses are “raisable and lowerable” (line 11). Thus, it is possible that the shafts are connected to components not even shown in Figure 1. Clearly, nothing is specified regarding if or how any such components are secured. Further, the unknown connection of the aforementioned shafts could entail an even larger number of components.

Welp does not teach securing his machine to a floor

Claim 1 recites: “a base plate operatively arranged to be secured to a floor;” The Examiner states that base plate 11 (actually slide 11 in Welp) is secured to the floor via member (traverse in Welp) 9 and the framework of the machine. Applicants have shown that Welp does not teach a framework. However, assuming *arguendo* that Welp does teach a framework and the preceding linkage of components is correct, Welp is silent as to whether the framework is secured in any manner. Assuming *arguendo* that Welp’s framework is secured to another structure, there is no teaching that the structure is a floor. Any number of arrangements could be used to secure the framework and many of the possible arrangements do not involve securing the framework to a floor. For example, Welp’s machine could be supported by legs or stanchions that are not secured to a floor. Thus, there is no basis for the Examiner’s assertion that Welp’s framework is secured to a floor.

The Examiner is reaching with respect to the definition of “secured”

Assuming *arguendo* that Welp teaches that the slide 11 is connected to a framework and that the framework is connected to a floor, the Examiner is reaching and straining the bounds of credibility to assert that the complicated linkage of slide 11 to traverse 9 and an unspecified “framework” is consistent with the recitation of “secured to a floor” in Claim 1. The Examiner has cited Butterworth (USPN 6,547,909) and Slezak (USPN 6,691,945) to support the Examiner’s assertion that “secured” means “attached in some manner” unless it is further qualified. According to the Examiner’s assertion, the qualifier “directly” would need to be associated with every recitation of the limitation “secured” to avoid the possibility of an unlimited number of intervening components. Applicant submits that “secured to” inherently means directly secured to and further qualification is used to provide information regarding the

manner of the direct attachment or to signify an attachment through a plurality of intervening parts. For example, Butterworth states: "Each idler roll 32, 34, 40, 42, 44 and 46, is positioned and secured for rotation in a conventional manner." (col. 5, lines 42-44). Upon viewing Figure 1, it is clear that there is no intention for the idlers to be indirectly connected through a labyrinth of interceding parts and that "for rotation" describes the manner of the inherently direct connection.

Slezak states: "On the outboard end of the pivot shaft 15, i.e., away from the plate 20, the elongated, curved control lever assembly 13 is non-rotatably secured." (col.4, lines 34-39). "The loading lever assembly 14 is non-rotatably secured at one end of the pivot shaft 15,..." (col. 4, lines 66-67). "Each positive flange engagement mechanism 85 includes a slide tube 86 which is secured to the ears 77 by a pair of retaining rings 87, 87." (col. 6, lines 40-43). From the examination of Figures 1 and 2, it is clear that the secured items are directly secured and the qualifier provides further information regarding the direct securement. For example, the direct securement of assembly 14 is non rotating.

Welp does not teach all the elements of Claim 1. Therefore, Welp does not anticipate Claim 1. Claims 2-6 and 9-11, dependent from Claim 1, enjoy the same distinction from the cited reference. Applicants request that the rejection be withdrawn.

#### The Rejection of Claims 7, 8, and 12 Under 35 U.S.C. §103

The Office Action rejected Claims 7, 8, and 12 under 35 U.S.C. §103(a) as being unpatentable over Welp et al. (USPN 5,518,199). Applicants respectfully traverse the rejection.

#### Welp teaches against a base plate operatively arranged to be secured to a floor

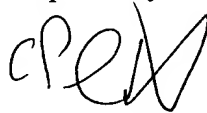
Claim 1 is novel with respect to Welp as shown above. Further, Claim 1 is non-obvious with respect to Claim 1. Welp does not disclose the Claim 1 element of: "a base plate operatively arranged to be secured to a floor." Welp also does not suggest or motivate the preceding claim element, since as noted supra, Welp contains no teaching with respect to a floor, a framework, and securing his machine. Thus, Claim 1 is nonobvious under 35 U.S.C. § 103.

"If an independent claim is nonobvious under 35 U.S.C. § 103, then any claim depending therefrom is nonobvious." *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Claims 7, 8, and 12 depend from Claim 1. Therefore Claims 7, 8, and 12 are patentable over Welp. Applicants request that the rejection be removed.

### **Conclusion**

The foregoing is submitted as a full and complete response to the Office Action. Applicants respectfully submit that the present application is now in condition for Issue, which action is courteously requested. The Examiner is invited and encouraged to contact the undersigned attorney of record if such contact will facilitate an efficient examination and allowance of the application.

Respectfully submitted,



C. Paul Maliszewski  
Registration No. 51,990  
CUSTOMER NO. 24041  
Simpson & Simpson, PLLC  
5555 Main Street  
Williamsville, NY 14221  
Telephone: (716) 626-1564  
Facsimile: (716) 626-0366

Dated: June 13, 2005  
CPM